

Award No. 6231
Docket No. 6043
2-MP-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the controlling agreement when other than painter was improperly assigned to paint out, re-paint and stencil Carrier owner's initials and number on freight car MP 353926 on July 13, 1969, Little Rock, Arkansas.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Painter A. F. Fithen in the amount of four hours (4') at the pro rata rate as he was available to perform this work on July 13, 1969.

EMPLOYEES' STATEMENT OF FACTS: At Little Rock, Arkansas, the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, maintains a large diesel shop, large inspection yard, spot repair track and track where heavy repairs are made, which is commonly referred to as "heavy rail". Painter A. F. Fithen, hereinafter referred to as the claimant, is employed on the spot rip and heavy rail, work week Monday through Friday, rest days Saturday and Sunday, assigned hours 7:00 A. M. to 3:30 P. M., and on July 13, 1969, Carman H. G. Morris was assigned to paint out the old carrier owner initials and car number on MP 353926 and replace them with new owner initials and car number. Carman Morris is employed in Subdivision No. 6—All Other Carmen, and the claimant is employed as a painter in Subdivision No. 3—Painters, Silver Platers, the differentiation of which will be dealt with later in the Employees' Position; however, we do wish to point out that Carman Morris' name appears on a seniority roster separate from that of the claimant.

The claimant was available to perform the work in question, and this is work which is contracted to painters in Subdivision No. 3, but was performed by a carman coming under Subdivision No. 6, and claim is made in behalf of the claimant for being deprived of performing work which is contracted to

perform all of the work of their craft which is required. In this case, the carmen on duty on the repair track on Sunday painted the new number on a freight car and renewed the reporting marks in connection with their work of repairing the car. Under these circumstances, there is no basis for a claim that a painter should have been called to perform this few minutes of work.

Your Board has held that there is no necessity for hiring painters when there is not sufficient work to justify their employment. See Award 3677. The same is true where the volume of work does not justify employing a painter three shifts a day, seven days a week.

Your Board has also held that stenciling work is not within the exclusive jurisdiction of painters in the carmen's craft. Carmen stencil lightweight and date freight cars are weighed, location and date freight car journal boxes are repacked, and other stencil work of a similar character. See Award 3512. The renumbering of the car in accordance with the instructions for renumbering all freight cars is stencil work of the same character and was properly performed by carmen on duty on date of claim in connection with their work of making repairs to the freight cars.

The carmen's craft is a single craft, and there is only one classification of work rule for the craft, to wit, Rule 17. While it is true that Rule 25 established subdivision for seniority purposes, and seniority purposes only, this subdividing for seniority purposes does not alter the fact that there is only one craft and one classification of work rule.

When the volume of work falling within the carmen's craft is sufficient at any one work location to justify specialists within the craft, such as painters, a job is established, the duties of which are specified as painting, and those who hold seniority within the seniority subdivision for painters are given preference in bidding on the position. Where the work is not sufficient to justify the employment of a specialist, the carman, that is, the employe assigned to freight car repairs, performs all of the work of his craft, including painting or any work falling within the specialties for which seniority subdivisions are provided. Employes holding seniority in the seniority subdivision for painters have seniority rights to bid on the regular assignments established for painters, but this does not alter the fact that there is one craft and one classification of work rule, and does not give those within the seniority subdivision for painters an exclusive right to perform a certain portion of the work listed in the carmen's classification work rule. The specialist has a preference or seniority right to bid on regular assignments for painters, and nothing more. The claimant in this dispute suffered no loss, but worked regularly on his assignment. There is nothing in the agreement which gives him an exclusive right to such work as the incidental stenciling performed by the carman on date of claim in connection with his duties of repairing the freight car.

For the reasons stated, the claim is totally lacking in merit and is not supported by the Agreement and should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This claim arose as a result of Carrier authorizing Carman H. G. Norris to paint out old number and stenciling in a new number of MP Car No. 353926 on July 13, 1969, rather than having Claimant, Painter A. F. Fithen, perform the work in question.

The Organization's position is that Rule 11 of the Agreement, entitled "Classification of Work" was violated when a carman from Seniority Subdivision No. 6, listed as "All Other Carmen" in Rule 25(c) was assigned to perform work belonging to employes in Seniority Subdivision No. 3, so named in Rule 25(c) as: "Painters, Silver Platers"; that carmen in Seniority Subdivision No. 6 hold no contractual rights in Seniority Subdivision No. 3; that painters by virtue of the fact that they have a separate seniority roster have preference to work recognized as painters' work, so recognized as painters' work in said Rule 117 of the Agreement; that there would be no purpose of identifying painters' work as such as distinguished from other carmen's work in said Rule 117 if it were intended that painters did not have prior right to its performance.

Carrier's position is that when a painter is not on duty at North Little Rock, carmen on duty perform all of the work of their craft that is required, and in this case the carmen on duty on the repair track painted the new number on a freight car and renewed the reporting marks in connection with their work of repairing the car; that there is no basis for a claim that a painter should have been called to perform this few minutes of work; that there is no necessity for hiring painters when there isn't sufficient work to justify their employment; that stenciling work is not within the exclusive jurisdiction of painters in the carmen's craft, that the carmen's craft is a single craft and there is only one classification of work rule for the craft — Rule 117 — and said rule does not give those within the seniority subdivision for painters an exclusive right to perform a certain portion of the work listed in the carmen's classification work rule.

Rule 117, the Classification Rule, provides in part:

" * * * painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing vats); * * *."

The "Seniority" Rule, Rule 25(c), lists carmen in eight (8) seniority subdivisions, namely, the ones we are interested in this dispute:

" * * *

Carmen No. 3, Painters, Silver Platers

* * *

Carmen No. 6, All Other Carmen"

This Board was faced with an analogous dispute in Award No. 4085, wherein the Board states:

“This Division has repeatedly held that painter’s work cannot properly be performed by employes not under the Carmen’s Agreement when a painter is available. Awards 1269, 1799, 2214, 3405, 3406 and 3410.

The Carrier contends that these awards are not in point, since here the work was performed by another Carman. But, as noted above, there are five carmen seniority lists, one of which is for painters only. Thus, they are entitled to protection against other carmen, as well as against other crafts, and this Board has so held in Awards 1519, 2459, 3256 and 3410. Award 2459 pointed out that although there was ‘but one classification of work rule for carmen’, there were ‘four seniority subdivisions in the carmen craft.’ It said: ‘Certainly those craftsmen have seniority preference to the performance of the work specified’ in the classification of work rule ‘on the basis of the subdivision in which they hold seniority’, where available.

The Agreement has been violated, and Claimant is entitled to a call of two hours and forty minutes. Pay for time not worked is computed at pro rata rate.”

For the aforesaid reasons, we will sustain the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1971.